



POLICE DEPARTMENT

September 17, 2013

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Reginald McReynolds
Tax Registry No. 898049
Quality Assurance Division
Disciplinary Case No. 2009-1094

The above-named member of the Department appeared before me on May 17, 2012, May 10, 2013¹ and June 7, 2013, charged with the following:

1. Said Sergeant Reginald McReynolds, assigned to Quality Assurance Division, on or about October 26, 2009, within the confines of the 52nd Precinct, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant failed to immediately identify himself as a Member of the Department to on-duty Members of the Service known to this Department.

P.G. 203 10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Sergeant Reginald McReynolds, assigned to Quality Assurance Division, on or about October 26, 2009, within the confines of the 52nd Precinct, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant pushed an on-duty Member of the Service, in uniform, in the chest.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

3. Said Sergeant Reginald McReynolds, assigned to Quality Assurance Division, on or about October 26, 2009, within the confines of the 52nd Precinct, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant refused to answer questions from an on-duty Member of the Service, in uniform, conducting an investigation.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

¹ The extensive delay between the first and second trial dates was mainly due to the fact that the attorney who represented Respondent at the start of this trial, Dominick Revellino, had to withdraw because of medical problems and the attorney who replaced Mr. Revellino, Rocco Avallone, was subsequently replaced by Shahin Mashhadian.

4. Said Sergeant Reginald McReynolds, assigned to Quality Assurance Division, on or about October 26, 2009, within the confines of the 52nd Precinct, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant directed a Yvelisse Cruz to call 911 and inform the operator that a uniformed Member of the Service was hitting him in the face when that was not in fact true. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by Shahin Mashhadian, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on October 26, 2009, at about 0115 hours, Respondent was off-duty. He had finished work at his authorized off duty job at Yankee Stadium and he was on his way to visit his girl friend Yvelisse Cruz who resided in an apartment on the third floor of the residential building at [REDACTED], which is located within the confines of the 52 Precinct. Respondent entered [REDACTED] and, as he was walking up the stairs, he encountered on duty, uniformed Police Officers Kyle Bach and Joseph Azevedo who were responding to a domestic dispute radio call.

The Department's Case

The Department called Police Officers Kyle Bach, Joseph Azevedo and Stephanie Abdul-Jabbar, and Sergeant Joseph Mineo as witnesses.

Police Officer Kyle Bach

Bach, a five-year uniformed member of the service (UMOS) who has been assigned to the 52 Precinct since graduating from the Police Academy, testified that on October 26, 2009, he and Azevedo were assigned to patrol Sector Mike in a marked RMP. Azevedo was the operator and Bach was the recorder. Bach recalled that the family dispute call they received indicated that the female complainant would meet them in front of [REDACTED], but when they arrived no one was there. When Bach contacted the dispatcher, the dispatcher told Bach that the woman was inside apartment [REDACTED] and that she was afraid to come out of the building because the male who was involved in the family dispute was in front of the building. Bach did not see anyone in front of the building.

The officers gained entry to the building and proceeded to apartment [REDACTED]. Bach heard yelling as he approached the door. His knock was answered by a woman who was holding a baby and who appeared disheveled and unkempt. Bach believed that the woman had been arguing with someone over the phone. Bach recalled that the woman told him that she was "basically a third party" to an argument between her two roommates, a man and woman who were dating. The couple had since left, but the woman was afraid that the male would return and do something. Bach testified that since there was a "language barrier" with the woman, he was unable to get a description of the

male. Bach asked the woman if he could come in to make sure everything was all right because he had heard yelling. The woman allowed Bach inside. He saw three children asleep in their beds.

Bach left the apartment and walked down the stairs from the third floor to a landing area located between the second and third floors which he referred to as landing area "2.5." There he encountered a black man, wearing a T-shirt, running shorts and flip flops. The man was carrying a clear bag with a wallet and clothes inside it. The man appeared sweaty and disheveled and looked like he had just been involved in an argument. Bach suspected that he might be the man who had been involved in the family dispute the woman described since it was late at night and the man was not dressed for the cold weather.

Bach identified Respondent in the Trial Room as the man he had encountered. Bach testified that he asked Respondent what apartment he lived in. Respondent answered, "Why?" Bach testified that he then asked Respondent the same question again. This time Respondent answered, "I don't have to tell you anything." Bach estimated that throughout his encounter with Respondent, he may have asked that same question "between ten and 20 times." Bach described Respondent's demeanor as "tensed up." Bach testified that he took out his flashlight and shined it at Respondent to "throw him off balance in case a fight is going to erupt." When Bach again asked Respondent which apartment he lived in, Respondent answered, "I'm not going to tell you anything with that light shining in my eyes."

Bach recalled that Azevedo told Respondent, "If you don't tell us where you live, we're going to bring you in for criminal trespass." Bach explained that [redacted]

[REDACTED] is a “clean halls building,” meaning that the owner of the building had registered the premises with the 52 Precinct which permitted officers to arrest anyone found in the building who was not there for a legitimate purpose. Respondent did not respond to Azevedo’s demand. Respondent became more “aggressive in his stance and stature” and it appeared to Bach “that possibly he’s going to start a fight.” Bach opened his expandable baton because Respondent was standing on his toes, flexing his chest, and clenching his fists. When Azevedo reached out to place a handcuff on Respondent’s hand, Respondent pushed Azevedo in the chest back against the wall. Bach then pressed his baton against Respondent’s chest and grabbed Respondent’s other hand and pulled it towards him. Bach hoped that this would give Azevedo a chance to handcuff Respondent’s other hand. Bach recalled that he and Azevedo were “flying back and forth across the landing, wrestling with” Respondent. Bach got behind Respondent and bear hugged him, trying to hold his arms back so that Azevedo could handcuff him. Bach testified that eventually Azevedo was able to place handcuffs on Respondent.

At some point when Respondent was still struggling and not putting his hands behind his back, Respondent stated, “I’m on the job.” Bach asked Respondent, “Where do you work? Where’s your ID?” Respondent stated that his ID card was in his wallet, which had fallen onto the floor during the struggle. Azevedo searched the wallet, but he could not find any ID. Bach eventually found Respondent’s Department ID card in the back of his wallet “hidden behind basically everything in there.”

Bach radioed for the patrol supervisor, Sergeant Joseph Mineo, to respond to the scene. He then saw a woman at the top of the stairs on the third floor. This woman appeared to know Respondent. She began screaming. Respondent told the woman, “Call

911. Tell them I'm an off duty member of the service and I'm being assaulted."

Respondent also told the woman to get a camera. Shortly thereafter, the woman came into the hallway and started taking pictures. Bach radioed a second time for the patrol supervisor to respond.

When Mineo and Police Officers Diaz and Destefano arrived at the scene, Bach and Azevedo informed Mineo of what had happened. Mineo told Bach and Azevedo to go downstairs and wait. They were then ordered to report back to the precinct. Bach denied that he had punched Respondent in the face.

On cross-examination, Bach confirmed that he had previously been placed on performance monitoring. This monitoring ended in July. Bach also confirmed that he has been named a defendant in "a few" lawsuits brought against the City of New York alleging use of excessive force.

Bach could not recall what nationality the woman in apartment █ was or what language she spoke. Bach recalled that she "appeared to be black." Bach did not get her name. He could not recall whether he had asked her to describe the man she had called 911 about. He agreed that doing so would be standard operating procedure. He recalled that the woman's hair "just looked a little undone" and that "her face had the appearance of upset." Bach agreed that it would not be unusual for someone answering the door at 1:15 a.m. to have their hair out of place. Bach could not recall what the woman was wearing.

Bach first spotted Respondent as he was coming up the stairs from the second floor as he and his partner were walking down from the third floor and that they "basically met on the landing." Bach could not recall in which hand Respondent held the

bag. Bach denied seeing Respondent holding a second bag containing take-out food. Bach saw the shape of a wallet and clothes in the bag he saw Respondent carrying. When Bach first saw Respondent, he had sweat on the collar of his shirt, his face was sweating and he looked upset. Bach agreed that Respondent had just walked up two flights of stairs when he first saw him, but he disagreed that this would explain how sweaty Respondent appeared at that time.

Bach confirmed that he did not ask Respondent who he was or what he was doing in the building. He only asked him what apartment he lived in. Bach asserted that Respondent started to tense up after Bach asked the same question a second time. Bach agreed that because Respondent was wearing athletic shorts, Bach could see that he Respondent was not carrying a firearm. Bach could not recall how long the encounter on the landing had lasted. Bach agreed that less than five minutes passed between the time he first saw Respondent and when he radioed for the patrol supervisor to respond. Bach recalled that it "wasn't long" after he radioed the second time for the patrol supervisor that Mineo arrived.

Bach testified that he kept Respondent handcuffed after he discovered he was a UMOS because Respondent continued "acting irate and combative." Bach believed that Respondent "was going to punch" him. Bach still had his expandable baton in his hand while he was trying to get Respondent into a bear hug.

Bach recalled that his conversation with Mineo was brief and that Azevedo explained the situation to Mineo. At Mineo's direction, Bach made an entry in his Activity Log before returning to the precinct. Bach only wrote "1:15, 52 family" at [REDACTED] and "02:15, 62 administrative in house." Bach confirmed that he

did not personally prepare a Domestic Incident Report (DIR). Bach was subjected to an official Department interview the following morning.

Police Officer Joseph Azevedo

Azevedo, a five-year UMOS who is presently assigned to Narcotics Borough Manhattan North, recalled that when he and Bach arrived at [REDACTED] they saw a sign which stated that it was a "Clean Halls" building. They entered the building because they were informed by the dispatcher that the female complainant had refused to come outside to meet the officers because she was fearful for her safety.

Azevedo testified that while Bach was speaking with the woman who had answered their knocks on the door of apartment [REDACTED], he entered the apartment and looked around to see if anyone needed help. Bach told him that the woman was the 911 caller, that her roommate had engaged in an argument with her boyfriend, that both of them had left, that she was afraid of her roommate's boyfriend, and that she was worried that he might return to the apartment. Azevedo had difficulty understanding the woman who was speaking in "broken English."

As they were walking down the stairs leading to the third floor, they saw a man coming up the stairs from the second floor. Azevedo identified Respondent as this man. Azevedo recalled that Respondent was wearing a T-shirt, shorts and sneakers and was carrying a plastic bag with keys, a wallet, and some papers. Azevedo had no recollection of seeing Respondent carrying any take-out food.

Azevedo testified that Bach asked Respondent where he was going and that Respondent answered, "Why?" Azevedo recalled that Bach repeated this question "a

couple times" and Respondent answered each time, "Why?" Azevedo characterized Bach's tone of voice as "calm" and Respondent's as "annoyed or agitated." Azevedo described Respondent's body language as "standing defensive, like he was challenged" and that he was "pushing out his chest." Azevedo asked Respondent if he had any reason to be in the building or if he had any ID. Azevedo told Respondent that if he did not have any ID or any legitimate purpose for being in the building, then he could be arrested for criminal trespass. Respondent again asked, "Why?" Azevedo repeated the question and got the same answer.

Azevedo then instructed Respondent to turn around and place his hands behind his back because he was going to be arrested. When Azevedo went to put handcuffs on Respondent, he pushed Azevedo in the chest with his hand. Bach then grabbed Respondent and put his arms around him holding him in a bear hug. Azevedo was then able to get one handcuff on Respondent's wrist. Respondent then said that he was "on the job." When Azevedo asked him, "What job?" Respondent kept repeating that he was "on the job." Azevedo was eventually able to get both handcuffs on Respondent's wrists.

Azevedo asked Respondent for identification again. Respondent told Azevedo that his identification was in his wallet. Azevedo found the wallet in the plastic bag that Respondent was using to carry his other belongings, but Azevedo was not able to find Respondent's identification inside the wallet.

While he was looking through the wallet, a woman, whose name he later learned was Cruz, appeared on the third floor. Azevedo walked up to the third floor and asked her where Respondent worked. Cruz replied, "With you" in "Quality Assurance." Azevedo was not aware at that time that Quality Assurance was a Departmental unit.

When Bach found Respondent's Department ID card inside the wallet, Respondent said, "See? I'm a fucking sergeant." Azevedo testified that they then radioed for the patrol supervisor to respond.

Respondent then told Cruz to go and get a camera. Cruz did so and started taking pictures. Respondent then told Cruz to call 911 and to tell the 911 operator that Bach was punching him in the face. Azevedo told Cruz that he could not stop her from calling 911 but that she should not say anything that was not true. Respondent "became agitated again" and told Bach that he was "done," that he was "through," and that he was going to take his pension from him. When Mineo arrived Azevedo told him what had happened. Officers Diaz and Destefano stayed with Respondent. Azevedo, Bach and the other officers were told to return to the 52 Precinct.

On cross-examination, Azevedo agreed that because he had never met previously met Respondent, he did not know whether it was not unusual for him to puff his chest out when standing. Azevedo confirmed that he has never received training regarding how to interpret postures. Azevedo denied that Respondent had been spotted on the stairs leading up to the third floor and that he never told Respondent to stop ascending the stairs. Azevedo agreed that Respondent is a large man and that it was a snug fit for all three of them to be standing on the small landing.

Azevedo described the one bag he saw as a clear, transparent bag. It contained no food. Azevedo could not recall Bach using any profanity but he conceded it was possible that he did. Azevedo could not recall when Bach pulled out his expandable baton but that he put it around the back of Respondent while he was bear hugging him. Azevedo agreed

that Respondent had started to comply with his order to turn around, but once Azevedo pulled his handcuffs out and went to place them on him, Respondent pushed him. Azevedo could not recall how long the incident lasted.

Azevedo agreed that there was no description of the suspect in the original radio call and that he did not obtain description from Bach after he had spoken with the complainant. He agreed that it would have been important to have a description of the suspect of a domestic incident when the complainant was fearful. Although the complainant's English was "bad," Azevedo did not request radio for an interpreter to come to the scene. Azevedo confirmed that neither he nor his partner completed a DIR because they were ordered to return to the 52 Precinct for official Department interviews regarding the incident with Respondent. To his knowledge, no male suspect was ever identified or apprehended.

Azevedo recalled that the initial question they had asked Respondent was where he was going because they wanted to know if Respondent was going to apartment █.

Azevedo agreed that they could have knocked on the door of apartment █ to see if the complainant could identify Respondent but that they did not do that.

Azevedo confirmed that Bach found Respondent's Department ID while Azevedo was talking to Cruz. Azevedo recalled that he had looked through the wallet twice but was unable to find any ID card.

Azevedo believed that 3349 Hull Avenue was a Clean Halls building because of the sign posted in front of the building. He did not check with the precinct to determine whether the owner had filed an affidavit. Azevedo was not sure whether affidavits for the Clean Halls program had any time limit or if they were effective indefinitely. Azevedo

also was not certain whether he was required to ask someone who had no legitimate purpose to be in a Clean Halls building to leave the building before arresting them. Azevedo did not ask Respondent to leave.

Azevedo told Respondent that he was arresting him for criminal trespass before he placed him under arrest and before he placed Respondent in handcuffs. Azevedo did not recommend to Mineo that any particular charges be brought against Respondent. Azevedo believed that Mineo would make this decision because he was the sergeant. Azevedo denied seeing Bach place a call on his cell phone while they waited for Mineo to arrive. Azevedo did not complete a UF-250 or a voided arrest form regarding Respondent. Azevedo was not certain whether he was required to do so since Respondent was a UMOS. Azevedo's Activity Log entry for October 26, 2009 states that he was the subject of an official Department interview that day but does not contain an entry documenting the incident with Respondent.

On redirect examination, Azevedo testified that he never had an opportunity to prepare a DIR.

Police Officer Stephanie Abdul-Jabbar

Abdul-Jabbar, a four-year UMOS who is assigned to the 52 Precinct, recalled that on October 26, 2009, she was performing patrol duties partnered with Police Officer Sean Destefano when, at 0144 hours, they responded to at [REDACTED] which Abdul-Jabbar testified is a residential Clean Halls building. As they approached the building, she saw Sergeant Mineo and his driver. The four of them entered the building together and walked up the stairs. Mineo and his driver stayed on the second floor and Abdul-

Jabbar and Destefano walked up to the landing between the second and third floors where she saw Bach and Azevedo holding a man, who she identified as Respondent, against the wall. Abdul-Jabbar described Respondent as being “kind of agitated.”

Mineo directed Bach and Azevedo to come down to the second floor to explain what had happened. Destefano relieved Bach and stood next to Respondent. Abdul-Jabbar remained on the stairs just below the landing where Destefano and Respondent were standing. Abdul-Jabbar heard Respondent tell Destefano, “Your boy Bach is going down. I’m gonna get his job.” Respondent did not appear to be injured and he did not request medical assistance.

Abdul-Jabbar testified that Mineo came up to the landing and asked Respondent why he did not identify himself. Respondent did not answer Mineo’s question. He walked up the stairs to the third floor where a woman was holding a camera.

On cross examination, Abdul-Jabbar recalled that when she first saw Respondent, he was in handcuffs. At that point, she was not aware that he was a UMOS. She saw nothing that indicated that there had been any struggle. She could not recall whether the front door to the building was locked when they arrived or how they got into the building. Abdul-Jabbar confirmed that she remained on the stairs “a couple of steps” below the landing where Respondent and Destefano were standing. She never went up to the third floor and she did not recall seeing any bags. She could not hear Mineo’s conversation with Bach and Azevedo on the second floor. Abdul-Jabbar testified that neither she nor Destefano asked Respondent any questions before he stated, “Your boy Bach is going down.” At some point, Mineo directed that the handcuffs be taken off of Respondent. Abdul-Jabbar could not recall who took them off.

Sergeant Joseph Mineo

Mineo, an 18-year UMOS who has been assigned to the 52 Precinct and has held the rank of sergeant for eight years, recalled that on October 26, 2009, he was assigned as patrol supervisor. His driver was Police Officer Phillips.

Mineo recalled that at 0144 hours, he received a radio call from Sector Mike, which was being patrolled by Bach and Azevedo, requesting that the patrol supervisor respond to [REDACTED]. As Philips was driving to [REDACTED], Mineo received a second radio call requesting his estimated time of arrival. The entire trip took five to seven minutes.

Mineo testified that [REDACTED] was a Clean Halls residential building. When he arrived, he stopped on the second floor to speak with Azevedo who told him that he and Bach had asked Respondent to provide identification or a reason for being in the building, but Respondent had refused so Azevedo and Bach had attempted to place Respondent under arrest, at which point Respondent had identified himself to them as being a UMOS and a sergeant.

Mineo walked up to the landing to speak with Respondent. Mineo described Respondent's demeanor as "agitated." Mineo recalled that he asked Respondent three times why he had not identified himself as a UMOS to Azevedo and Bach. Respondent did not answer. Mineo did not ask Respondent any further questions. Mineo recalled that Respondent told Bach that he "would take his pension." Mineo did not observe any injury to Respondent and he never requested medical attention.

Mineo testified that he then ordered Bach, Azevedo, Respondent, and the woman that Respondent was visiting to report to the 52 Precinct for further investigation. Mineo

intended to inform the Duty Captain and turn the investigation over to him. Mineo ordered Officer Sheehan to speak to the female complainant in apartment █ and to prepare a DIR.

On cross examination, Mineo confirmed that he does not respond to every incident scene when he is serving as patrol supervisor but he will respond if the call is made a priority by the sector. Mineo testified that he responded to █ because the dispatch told him that Bach and Azevedo had requested him. Mineo did not recall seeing a Clean Halls sign at █. He did not look for an affidavit from the building's owner. Mineo explained that the signs posted by building owners under the Clean Halls Building Initiative do not indicate any expiration date. Mineo was not sure whether the affidavits filed by owners had expiration dates or if they were effective indefinitely.

Mineo recalled that when he was called over the radio the second time, he heard background noise as if people were struggling. Mineo estimated that five to seven minutes elapsed between the first call and the second call. Mineo denied speaking with Bach over the phone or individually over the radio. Mineo only spoke with the dispatcher before arriving at the scene. Mineo did not recall discussing the domestic incident in apartment 3L with Azevedo. Mineo did not recall whether Azevedo had a description of a suspect regarding that incident. He agreed that obtaining a description of the suspect in a domestic incident was important. Mineo did not speak to the woman on the third floor and he could not recall what, if anything, she was holding.

Mineo described Respondent as agitated and sweaty when he spoke to him on the landing. Mineo recalled that Respondent was wearing civilian clothes, but he could not

recall his specific outfit or what kind of footwear Respondent had on. Mineo denied that Respondent had complained to him about the tightness of the handcuffs. Mineo recalled that he had the handcuffs removed because he determined that Respondent had been going to an apartment on the third floor and because Respondent was a UMOS who he had ordered to go to the 52 Precinct so that the investigation could be continued.

Mineo testified that he believed that Bach and Azevedo had probable cause to place Respondent under arrest since Respondent had refused to answer their questions regarding what apartment he was going to and since the building was a Clean Halls building. Mineo described Bach and Azevedo's actions as an attempt of an arrest and testified that he believed that Bach and Azevedo had acted correctly.

Mineo recalled that in his official Department interview, he agreed that the Patrol Guide requires a prisoner to be released upon discovering there is no probable cause for an arrest and that an online booking sheet must be completed. Mineo did not recall whether that procedure was followed on October 26, 2009, or what, if any, paperwork was prepared. Mineo clarified that there is no form that documents a voided arrest. Mineo confirmed that he did not order Bach or Azevedo to complete a UF 250 in connection with their interaction with Respondent. Mineo explained that after he returned to the 52 Precinct, he was no longer the supervisor in charge of the investigation, the Duty Captain was.

Mineo was not aware whether the domestic incident in apartment 3L was ever resolved, which officers conducted any follow-up investigation, or if any suspect was ever identified. Mineo did not recall that ever speaking with the complainant in apartment 3L. Mineo's Activity Log shows that he made entries regarding receiving the

call to respond to [REDACTED], arriving there, and leaving there to travel to the 52 Precinct. Mineo did not recall telling Bach and Azevedo not to radio a final disposition for the assignment at [REDACTED].

Mineo testified that he was not aware that Bach was on disciplinary monitoring on the night of the incident. He learned this at his official Department interview on April 13, 2010. Mineo was not aware of why Bach was placed on monitoring. Mineo testified that he was not aware if Azevedo was ever on disciplinary monitoring. Mineo spoke to an SBA delegate before his official Department interview. Mineo did not recall speaking to Bach and Azevedo once they were at the 52 Precinct, and denied that he was ever in a room alone with them and his SBA delegate.

On redirect examination, Mineo characterized Bach's performance as a police officer as "good." Mineo also explained that only an arrest that is booked can be voided. Mineo explained that since Respondent's arrest was never booked there was no arrest to void. Mineo explained that Bach and Azevedo had a basis to handcuff Respondent because Respondent refused to give the officers a legitimate reason why he was inside a Clean Halls building.

On re-cross-examination, Mineo clarified that the current procedure under the Clean Halls initiative is to offer a person who has no legitimate reason for being in a building the option of leaving the building before arresting the person for trespassing. However, on October 26, 2009, offering the option to leave was not part of the procedure.

Respondent's Case

Respondent called Captain Stewart Leiber and Yvelisse Cruz as witnesses and he testified in his own behalf.

Captain Stewart Leiber

Lieber, a 31-year UMOS who is assigned to Patrol Borough Bronx, testified that he has been a captain for 12 years and that he works as a “steady midnight captain,” which involves visiting each precinct in the borough during the night to ensure that “everything is going the way it’s supposed to.” Lieber also responds to any “unusual incidents” and conducts the preliminary investigation of possible disciplinary matters to determine whether the Investigations Unit (IU) should be called.

Lieber testified that he was the Duty Captain that Mineo called on October 26, 2009. After Mineo told him what had happened, Lieber told Mineo to “have everybody stand by.” Lieber responded to the 52 Precinct and met with Mineo in the Commanding Officer’s office. Mineo told Lieber that two officers had almost placed an off-duty sergeant under arrest after that off-duty sergeant failed to identify himself to them.

Lieber called for the IU and union representatives to come to the 52 Precinct. Respondent told him that he had already called for a union representative to come to the precinct. Lieber recalled that Respondent appeared “a little agitated,” and that he was “talking fast” and “seemed excited.” Lieber did not discuss the incident with Respondent until his official Department interview.

Lieber testified that he determined that Bach and Azevedo, Mineo, Respondent, and the officers who responded to the scene should all be officially interviewed. Lieber

recalled that the IU attempted to interview Cruz that night. Lieber was not sure if they were ever able to do so, or anything else that happened in this investigation after October 26, 2009. Lieber agreed that an interview with the complainant would have been pertinent to the investigation but he did not personally attempt to contact the complainant.

Lieber recalled that he was present at the official Department interviews for all of the UMOS. After the interviews, Lieber met with Deputy Inspector Ortiz and Chief Purtell, the Commanding Officer of the Patrol Borough Bronx. They decided to suspend Respondent because they concluded that the incident “got out of hand” and “could have been defused had he identified himself.”

Lieber recalled that Respondent stated at his official Department interview that he had identified himself to Bach and Azevedo. Lieber agreed that he believed the account of the incident that Bach and Azevedo provided, but not that of Respondent. Lieber had checked the “pedigree information” of Bach, Azevedo, and Respondent to determine how long each had been with the Department. However, Lieber had not checked the disciplinary history of any of the UMOS because “one incident is separate from everything else.” Lieber also testified that he would “usually look at the SPRINT printout,” but he had no recollection of doing so regarding this incident. Lieber testified that he would not normally review 911 tapes.

Lieber recalled reviewing and signing a report regarding the incident which IU drafted for him. Lieber testified, by referring to the report, that the name of the complainant in apartment [REDACTED] was “Person A.” Lieber did not recall how he had learned the name of the complainant in apartment [REDACTED]. Lieber also testified that the report described a suspect in the domestic incident in apartment [REDACTED] as a “black male” known as

“Person B” who was Person A’s niece’s boyfriend. Lieber was not certain who had provided that information for the report but that it probably came from Mineo or Bach or Azevedo.

The report that Lieber signed on October 26, 2009, also stated that “officers” prepared a DIR but Lieber could not recall what “officers” did this. Lieber did not remember seeing or reviewing a DIR in connection with the incident in apartment 3L. Lieber agreed that Department procedure was that a DIR must be completed regarding every domestic incident investigation and that normally the investigating officers would complete a DIR while at the scene of the incident.

Lieber’s report also indicated that Cruz stated during her interview that Respondent had instructed her to call 911 and that Respondent told her to tell the 911 operator that officers had punched him. Lieber clarified that IU had conducted Cruz’s interview and had provided that information for his report. Lieber denied that his report indicated that Cruz stated during her interview that Bach or Azevedo had pushed Respondent.

Lieber testified that IU never told him that Cruz had stated that Respondent had complained that his handcuffs were too tight. Lieber also said that IU never told him that Cruz had stated during her interview that Bach had told Respondent that Respondent was going to lose his pension. Lieber agreed that it would have been pertinent to his investigation if Cruz had said that during her interview and if Bach had said that during the incident. Lieber was not told by IU that Cruz said during her interview that Bach answered an unauthorized cell phone during the incident. Lieber disagreed that Bach answering a cell phone would be pertinent because it “has no bearing on the incident.”

Lieber testified that a canvass was conducted to ascertain if there was any audiotape or videotape of the incident with negative results. Lieber never personally visited the scene of the incident.

Lieber testified that the Internal Affairs Bureau (IAB) may have conducted interviews related to this incident but not on the night of October 26, 2009. Lieber did not review the Activity Logs of any of the UMOS who were involved in this incident.

Lieber confirmed that in his report, the sentence "he stated that when he saw Sergeant McReynolds on the stairway, he thought he might have been the male Person A that had been involved in the dispute in Apartment █" referred to a statement made by Azevedo. Lieber did not recall hearing Azevedo specifically say that. Lieber confirmed that after he finished his report on the night of October 26, 2009, his participation in the investigation ended. Lieber did not draft charges and specifications against Respondent.

On cross examination, Lieber agreed that his investigation as Duty Captain was purely preliminary. His role was to make an initial determination that an off-duty incident occurred, and to recommend to the chief whether or not Respondent should be suspended. Lieber recalled that someone had told him that the building was a Clean Halls building. Lieber agreed that it was possible that IU had ascertained the name of the complainant in apartment 3L.

On redirect examination, Lieber agreed that it was important whether the building was a Clean Halls building because Bach and Azevedo had told Respondent that it was a Clean Halls building and that they could arrest him pursuant to that program. Lieber did not verify whether the building was a Clean Halls building. Lieber testified that Bach and Azevedo had told him that they initially approached Respondent because they thought

Respondent "might be Person A." Lieber recalled that Bach and Azevedo told him that the description they had obtained regarding the suspect in the domestic incident in apartment 3L was "male, black, and the name Person A."

Yvelisse Cruz

Cruz, a branch manager for the Municipal Credit Union who has resided in [REDACTED], New York, for the past three years, testified that in October, 2009, she lived with her daughter at [REDACTED], a private, residential building. Cruz has been in a romantic relationship with Respondent for eight years. Though they reside together now, when Cruz lived at [REDACTED], they did not live together. Respondent would visit her apartment and he was familiar with the building.

Cruz recalled that on the evening of October 26, 2009, she was at home watching television. That evening, Respondent was working at Yankee Stadium as a vendor. Cruz recalled that Respondent called her from work and told her that he was coming to her apartment after the game. The weather that night was not too cold and it was not raining. Cruz explained that Respondent would dress in T-shirts and shorts even when it was cold outside.

Cruz recalled that she had met her female neighbor from apartment [REDACTED] only once before October 26, 2009. Cruz believed that she had a Jamaican accent, which she recognized from a prior trip to Jamaica. Despite her accent, Cruz recalled that her neighbor spoke English well. On October 26, 2009, at about 10:00 p.m. Cruz "heard the police" inside apartment [REDACTED]. Cruz looked out of the peep hole in the front door of her

apartment and “saw clothes in the hallway.” Cruz recalled that she heard one of the officers say “don’t call back” to her neighbor. The officers then left.

Cruz recalled that “a couple” of hours later she heard Respondent’s voice. She went out into the hallway “to see what was going on.” Cruz saw Respondent handcuffed against the wall on a landing “between the second floor and third floor.” Respondent’s hands were handcuffed behind his back. He was wearing a T-shirt, shorts, and sneakers. Cruz also saw two officers, one “white” and the other “Spanish.” When she walked out into the hallway, Cruz saw the white officer pushing Respondent against the wall. Cruz told them, “He works with you guys. He is a sergeant.” The Spanish officer asked Cruz where Respondent worked, to which Cruz replied, “Quality Insurance Division.” Cruz recalled that the Spanish officer asked her, “What is that?” and came upstairs to stand next to Cruz.

Respondent then asked the white officer to “call and tell somebody higher to come to the scene,” which the white officer did. Cruz told the white officer to “go and get” Respondent’s “wallet and get his I.D.” The white officer then retrieved a wallet from Respondent’s bag and after he found Respondent’s Department ID inside the wallet, he told Respondent, “Today you are going to lose your pension.” Respondent did not respond but instead told Cruz to “call 911.” Cruz told the 911 operator that she wanted a “higher rank police officer, like a sergeant or lieutenant or whatever to come” to the scene. Cruz asserted that she did not tell the 911 operator that the officers were punching Respondent nor did Respondent instruct her to say this.

After some time passed, she called 911 again and told the operator that “we” needed somebody to come immediately. Cruz recalled that the 911 operator “started

asking a lot of questions." Cruz hung up. Cruz recalled that a few minutes after this second 911 call, other officers arrived.

After her second 911 call, but before other officers arrived, Cruz went back into her apartment, got a camera and took photos of Respondent and the two officers. [Respondent's Exhibits (RX) A-1 through A-7 are photographs that Cruz took.] Cruz recalled that before she went to get her camera, she saw the white officer "pushing" Respondent and that he also "took a black stick and put it around his neck." Cruz also recalled that before other police arrived, the white officer answered a cell phone and spoke with someone.

Cruz testified that she did not see Respondent push, punch, kick, spit at, threaten, or direct any profanity at the officers who were detaining him. Cruz characterized Respondent's temperament and demeanor during the incident as "very quiet and nice," not "mad." Respondent did complain that the handcuffs were too tight but neither officer loosened the handcuffs. Cruz estimated that Respondent was in handcuffs for about half an hour.

Cruz did not see the white officer or the Spanish officer speak with any other tenants in the building or go to apartment █. Cruz recalled that she was not blocking the way to apartment █ and the officers never asked her where it was. Cruz explained that apartment █ was two doors down the hallway from her own apartment, about 10-15 feet away.

When other officers arrived, the white and Spanish officers were each replaced on the landing by other officers. The white and Spanish officers went downstairs to speak with the sergeant who had arrived. Respondent remained handcuffed on the

landing until the sergeant ordered the handcuffs removed. Cruz recalled that once the handcuffs were removed from Respondent, she felt "that everything was getting okay." Cruz then went inside her apartment. She did not see a sergeant.

After this incident, a female officer knocked on Cruz's apartment door and asked her to get dressed and come to the precinct. Cruz recalled that she waited at the precinct for about two hours. When she arrived, she saw the white and Spanish officers go into a room with the sergeant. After "waiting there and nobody doing anything," Cruz went home. Cruz was contacted later by "Affairs... Investigation Department from the police," and she told them what had happened. Cruz did not recall ever being told by her fellow tenants, her landlord, or the police that her building was a Clean Halls building.

On cross examination, Cruz disagreed that the sign in front of her building showed the address as [REDACTED], though she admitted that she had never looked at it. Cruz clarified that although she and Respondent were dating for five years at the time of this incident, they lived in separate apartments. Respondent would visit her a few times each week, depending on their work schedules. Cruz would also visit Respondent's apartment. Respondent did not have his own keys to Cruz's apartment. He would have had to ring the bell to get into the lobby of the building.

Cruz clarified that her neighbor in apartment [REDACTED] had been living there for "less than a year" as of October 26, 2009. Cruz recognized her accent as Jamaican because Cruz had visited Jamaica and had some friends who were Jamaican. Cruz agreed that when the police were at apartment [REDACTED] at 10:00 p.m. they were responding to a domestic incident. Cruz testified that a man had left apartment [REDACTED], but Cruz did not know what the man's relationship to her neighbor was .

Cruz clarified that both she and Respondent told the white officer to look in Respondent's wallet for his Department identification. Cruz saw the white officer find the wallet in Respondent's bag. Cruz recalled that the 'investigative unit' interviewed her the morning following the incident at about 6:00 a.m. since she had left the precinct without being interviewed. Cruz also recalled that it was Internal Affairs who interviewed her over the phone 'a couple of months later' about this incident. The Internal Affairs investigator told her that they were recording the interview, and asked some 'background questions.' Cruz told the Internal Affairs investigator that her 18-year-old daughter, Person C, lived with her. Cruz also told the investigator that Respondent had lived with her for about four years. The investigator also asked her about the Clean Halls program, but Cruz did not know until that date what 'Clean Halls' meant.

Upon reviewing RX A-1 and RX A-7, Cruz did not think the officer on the left side of A-7 was the same officer as the Spanish officer in A-1. Cruz did not have a "clear memory" whether the officer in A-7 was the one who responded to the incident with the sergeant. The parties stipulated that A-1 through A-6 depicted Bach and Azevedo, and that A-7 depicted DeStefano.

On redirect examination, Cruz testified that she was not sure whether the IAB or Bronx Investigations interviewed her at her house. Cruz clarified that she told the investigators that Respondent lived with her because "it didn't matter" because she stayed "in his house, too." Cruz "didn't see it like a wrong thing."

Respondent

Respondent has been a member of the Department since October of 1990. After graduating from the Police Academy, he was assigned to the 42 Precinct for approximately three years, the Organized Crime Control Bureau for seven years, Police Service Area 7 for six months, Housing Investigations for eight years, and has worked for the Quality Assurance Division for five years. Respondent became a sergeant in 2001. He has no prior disciplinary history, nor has he ever been the subject of a CCRB complaint.

Respondent's duties for the Quality Assurance Division are to investigate complaint reports to make sure the "crime fits the narrative." Respondent will randomly re-interview complainants and may "upgrade the crime to a higher charge or... lower it to a lower charge."

Respondent testified that on the evening of October 26, 2009, he was working at his authorized off-duty employment at Yankee Stadium as a T-shirt vendor. Work ended "[l]ate in the evening" and Respondent headed to Cruz's apartment, [REDACTED], [REDACTED] afterwards. Respondent testified that he had visited Cruz's apartment "[s]everal times" before, but he never lived there. As of October 26, 2009, Respondent lived in [REDACTED] County.

On his way to Cruz's apartment, Respondent stopped at a "Chinese restaurant and picked up some rice." Respondent was wearing a "gray shirt, blue shorts and sneakers." Respondent was carrying two bags. The first bag contained a "Yankee sweat shirt" from Yankee Stadium. The second bag was a blue gym bag that was closed by a zipper. It

contained “money, [Respondent’s] wallet, [Respondent’s] I.D., food... [m]iscellaneous things inside.” Respondent recalled that he was holding one bag in each hand.

Respondent explained that the Clean Halls initiative was a program where private building owners could sign an affidavit with the Department to allow police officers to “approach anybody other than a guest, a resident or somebody that belongs in the building... question them, and if the person doesn’t belong in the building... they could leave or they could be arrested.” Respondent also explained that according to AG-303 series 3, police officers are supposed to ask a potential subject their name and purpose within the building, and for identification. If the subject does not state their purpose or present identification, police officers tell them “they could get arrested or they have to ask them to leave.” Respondent also explained that the affidavit that building owners sign to participate in the Clean Halls initiative is effective for six months.

Respondent recalled that as he walked up the stairs to the third floor, he reached the landing between the second and third floors. When he was “about three quarters” of the way up the stairs from the landing to the third floor, he saw two police officers leaving apartment █. Respondent testified that these officers were Bach and Azevedo. The officers turned towards Respondent. According to Respondent, Bach “ran up to” him and asked what apartment he was going to. Respondent pointed to Cruz’s apartment door with his left hand and said that he was “going to the third floor to [the] apartment to [his] left.” Cruz’s apartment door was within sight approximately ten feet from the staircase. Respondent recalled that his own demeanor during that moment was “tired, calm.” He was not upset or mad, nor did he use any profanity or initiate a physical confrontation as Bach approached him. Bach asked Respondent a second time which

apartment he was going to. Respondent pointed to Cruz's apartment. Bach then asked Respondent, "What fucking apartment are you going to?" Respondent did not answer Bach's profane question because he was "just surprised at the officer" for talking to him "like that." Respondent recalled that Azevedo then told him, "If you don't tell us what apartment you're going to, you could be locked up for criminal trespass." Respondent testified that the officers never asked him for his name or for identification. Respondent also testified that the officers never asked Respondent where he worked or why he was in the building. Azevedo did not mention the Clean Halls initiative or give Respondent the option to leave.

Respondent recalled that Bach took out and extended his ASP baton and started shining a flashlight into Respondent's eyes. Respondent then told the officers that he was "on the job" in order to "defuse the situation." Respondent explained that "on the job" was slang for identifying someone as a member of the Department. Azevedo replied: "[W]hat job?" Respondent said: "I'm a New York City Police Officer." Respondent recalled that both officers pushed him down the stairs. Respondent dropped the two bags he was carrying. The officers then handcuffed Respondent against the wall of the "2.5 landing" with his hands behind his back. The officers did not allow Respondent to show them identification. Respondent testified that he did not push, kick, or otherwise attack Bach or Azevedo.

Once handcuffed, Respondent was placed in the corner of the landing near a window. Bach "leaned his arm on [Respondent's] chest" to keep Respondent in place. Bach put his ASP away in his equipment belt. Respondent told the officers that his "I.D. was inside the bag" in his wallet. The officers then looked inside the bag for

Respondent's identification. Azevedo searched Respondent's wallet twice, but did not find Respondent's identification.

About "5, 10 minutes" after Respondent was handcuffed, Cruz came out of her apartment. After Cruz entered the hallway, Bach searched Respondent's wallet for his identification. Respondent "directed him to exactly where [his] I.D. was... in the back of the wallet." Bach looked at both sides of Respondent's Department ID while his elbow was on Respondent's chest." According to Respondent, Bach then said "Sarge, now you're losing your pension."

Respondent then told Bach to remove the handcuffs. Bach refused and said: "no, I'm waiting for a supervisor to come." Respondent then asked Bach to loosen the handcuffs because they were "very tight." Bach did not respond. Respondent estimated that he was handcuffed for "45 minutes" and that he asked for the handcuffs to be loosened "4, 5 times." Respondent testified that the handcuffs were loosened "[a]fter the sergeant responded to the scene." Respondent testified that his wrists had "swelling... bruising and tearing" as a result of wearing the handcuffs. Respondent's Exhibit D (RX-D) were two photographs. RX-D1 was a photograph of Respondent's Department identification card. The other photograph depicted Respondent's wrists after the handcuffs were removed.

After Bach told Respondent he would lose his pension, Bach "called an 85 for the sergeant to respond to the scene." Azevedo was standing on the third floor next to Cruz. After waiting between 5 and 15 minutes, Respondent told Cruz to call 911 and tell the operator "that we need a supervisor at the scene." When police did not immediately respond, Respondent told Cruz to call 911 a second time for "a supervisor or officers [to]

respond to the scene.” After more time passed without additional police arriving, Respondent told Cruz to “go inside that apartment and get a camera.” Respondent testified that he never instructed Cruz to tell the 911 operator that Bach or Azevedo were striking him in the face or otherwise attacking him. Respondent also testified that he never threatened Bach or Azevedo, nor did he ever make reference to their employment or pensions.

While they were waiting for a supervisor to respond, Bach kept his elbow on Respondent’s chest. At some point, Bach received a cell phone call. Respondent recalled that he “heard briefly the conversation” and that Bach “was referring to what [was] going on at [that] situation.” Respondent did not know exactly who was on the other side of the phone conversation, but he knew it “was somebody from the precinct.” Based on his experience in Investigations, Respondent testified that an officer on patrol cannot have a cell phone on them. After reviewing RXA 3, Respondent indicated that Bach was on his cell phone, and pointed out where his two bags fell on the 2.5 landing.

While they were waiting for a supervisor to respond, neither officer spoke with any other tenants in the building. Once Mineo arrived, Azevedo went down to the second floor to speak with him. DeStefano came up to the 2.5 landing and “replaced him with Officer Bach.”

After he reviewed RX A 7, Respondent indicated that the two officers standing with him on the 2.5 landing were Bach and DeStefano, who were with him while Azevedo was speaking with Mineo. At some point, Bach also went down to the second floor. According to Respondent, Mineo never came up to the 2.5 landing. Mineo ordered DeStefano to remove Respondent’s handcuffs.

Once he was out of the handcuffs, Respondent went down to the second floor and spoke with Mineo. Mineo asked Respondent why he did not identify himself. Respondent told Mineo that he did identify himself. Mineo asked Respondent: "what do you want to do?" Respondent replied that he wanted to file a complaint. Mineo replied that they would have to go to the precinct and have the duty captain respond. Respondent said: "that's what I want to [do]." Respondent testified that he remained "calm" during his discussion with Mineo and that he told Mineo that "the officers had the handcuffs on [him] too tight." Respondent answered every question that Mineo asked.

After speaking with Mineo, Respondent and Cruz went with the other officers to the 52 Precinct. Respondent and Cruz drove in their private vehicle with no other passengers. Once they arrived at the 52 Precinct, Respondent and Cruz waited in the "complaint area" and Mineo, Bach, Azevedo, and the "SAB sergeant" all went into the "muster room." Nobody else joined them in the muster room. Respondent waited in the 52 Precinct for "[a]pproximately... nine hours" before being interviewed. According to Respondent, the duty captain, Lieber, never responded to the scene. Instead, Respondent waited for Lieber at the 52 Precinct.

Respondent explained that a "vertical" is an "optional tactic" where police officers search for a "particular subject" from the top floor to the bottom floor of a building. Respondent clarified that this tactic is usually used on patrol, not when answering a radio run. Respondent also clarified that this tactic is appropriate when police officers have a "description [of the subject] with them."

Respondent testified that he was never interviewed by the Internal Affairs Bureau in connection with this incident. As a result of the incident, Respondent was suspended

for 30 days, but returned to full duty status immediately after suspension. Respondent never received any disciplinary action from his command as a result of this incident.

On cross examination, Respondent testified that he did not have his own key to Cruz's apartment and had to be buzzed into the building. Respondent clarified that he did not know Cruz's apartment number in [REDACTED] because her door did not have any numbers posted on it. He relied on his memory to locate Cruz's apartment. Cruz's last name, [REDACTED] is posted on the buzzer in the lobby that Respondent used to enter the building. Respondent learned that Cruz's apartment number was [REDACTED] on the night on the incident.

Respondent clarified that he was only interviewed one time in regards to this incident. On the night of the incident, Respondent was interviewed by Lieutenant Higgins from Bronx Investigations. Respondent recalled that Higgins stated for the record the address of the building as [REDACTED].

Respondent recalled that when he approached Cruz's building he knew there would possibly be police officers inside the building because he saw a police car outside. When Respondent first saw the two police officers on the third floor, he knew they were responding to a radio run inside the building. The reason he did not give them an apartment number was that he did not know the number of Cruz's apartment, only its location.

Respondent clarified that he identified himself as a member of service after he saw Bach extend his ASP and shine his flashlight in Respondent's eyes. He asserted that he was handcuffed after he told the officers that he was in the "New York City Police Department." Respondent testified that at the time of the incident, he did not know

whether Cruz's apartment building was involved in the Clean Halls initiative, nor did he know what the program was. Respondent was familiar with the Trespass Affidavit Program (TAP) from his time in the Housing Bureau. From this experience, Respondent knew the procedures for officers who stop people under such a program.

Respondent testified that according to TAP, officers must give people they stop the option to leave if they do not have identification or a reason to be in the building. Respondent disagreed that the option to leave was not effective until 2012, clarifying that under "the Newton (sic) order it was just rephrased, but it was there also before that." Respondent agreed that he knew Cruz's building was a TAP building.

On redirect examination, Respondent clarified that Bach had asked him, "What fucking apartment number you're going to." Respondent did not know the number of Cruz's apartment and was "puzzled" regarding "the way he was talking to me." Respondent asserted that Bach could see the apartment door he was pointing to. Respondent knew exactly what door he was going to from visiting Cruz's apartment for the previous five years.

FINDINGS AND ANALYSIS

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by failing to immediately identify himself as a UMOS to Bach and Azevedo; by pushing Azevedo in the chest; by refusing to answer questions posed to him by Sergeant Mineo who was conducting an investigation; and by directing Cruz to call 911 and inform the operator that a UMOS was hitting him in the face when that was not in fact true.

With regard to the charge that Respondent failed to immediately identify himself as a UMOS to Bach and Azevedo, it is not disputed that Bach and Azevedo were in uniform when they responded to [REDACTED] (the building) regarding a 911 domestic dispute call. It is also not disputed that the female caller was extremely fearful of the man she had called 911 about, and Bach offered unrefuted testimony that when the officers went to the complainant's apartment on the third floor of the building she told them that she was afraid that the man might soon return to her apartment.

When the complainant's extreme fear of what Respondent's attorney described as "a potentially dangerous and violent suspect" is combined with the unrefuted testimony of Mineo and Abdul-Jabbar that the building was a "Clean Halls" building, the record establishes that when Bach and Azevedo encountered Respondent, who was dressed in casual civilian clothing, as he was walking up the stairs to the third floor where the complainant's apartment was located, they had a sufficient basis to ask him where he was going.

Bach testified that when he asked Respondent what apartment he lived in, Respondent answered, "Why?" and that when he asked Respondent this question again, Respondent stated, "I don't have to tell you anything." Azevedo corroborated Bach's claim that when he asked Respondent where he was going Respondent answered, "Why?" and that although Bach repeated this question "a couple times," Respondent continued to answer, "Why?" Azevedo also testified that when he personally asked Respondent twice if he had any reason to be in the building and told him that if he did not have any ID or any legitimate purpose for being in the building that he could be arrested for criminal trespass, Respondent again only responded, "Why?"

In his testimony at this trial, Respondent confirmed that as he was walking up the stairs to the third floor Bach asked him what apartment number he was going to. Respondent asserted that the only reason that he did not tell Bach that he was going to apartment █ was because he did not know at that time that the third floor apartment Cruz resided in was apartment █.

Although Respondent described himself as being "puzzled" by Bach's question, I find that he took offense at being asked what apartment number he was going to because that is the only explanation for his otherwise inapplicable and unexplained failure to tell Bach that he was there to visit a tenant, that her name was Yvelisse Cruz, and that she resided in an apartment on the third floor.

Thus, although Respondent asserted that he had pointed his finger at the door to Cruz' apartment, his own testimony corroborates Bach's claim that he never verbally responded to Bach's question regarding what apartment number he was going to. Also, even if I credited Respondent's testimony that, although he had been visiting Cruz at her apartment for five years, he did not know that the building was enrolled in the "Clean Halls" program, the mere fact that Respondent was unaware of this does not justify his failure to verbally respond to Bach's question regarding what apartment number he was going to.

Respondent offered unsupported testimony that when Bach pointed his flashlight at Respondent's eyes, he told Bach and Azevedo that he was "on the job" and that he was a member of the "New York City Police Department." I find that Bach's and Azevedo's testimony that Respondent did not identify himself as a UMOS until he was being handcuffed has the ring of truth because I do not believe that they would have even

started to place handcuffs on Respondent's wrists if he had actually told them at the point when Bach pointed his flashlight at him that he was "on the job" and a member of the "New York City Police Department," as he claims he told them.

Moreover, Bach's and Azevedo's testimony that Respondent did not identify himself as a UMOS until after he was being placed in handcuffs is supported by Mineo's testimony and by the testimony of Abdul-Jabbar. Mineo, a sergeant in uniform who Respondent knew was conducting an official investigation as to why Bach and Azevedo had handcuffed and detained Respondent, testified that even though he asked Respondent three times, "Why didn't you ID yourself?" Respondent never answered his question. Mineo's testimony that he asked Respondent this question and that Respondent did not answer the question was corroborated by Abdul-Jabbar. Neither Mineo nor Abdul-Jabbar had any reason to falsely claim that Respondent had refused to answer Mineo's direct question. As a result, I reject Respondent's claim that he told Mineo that he had identified himself as a UMOS to Bach and Azevedo.

Based on the above, I credit Bach's and Azevedo's testimony that Respondent did not immediately identify himself to them as being a UMOS and I credit Mineo's testimony and the testimony of Abdul-Jabbar that Respondent refused to answer questions posed to him by Mineo, a sergeant who was conducting an investigation.

Regarding the charge that Respondent directed Cruz to call 911 and inform the operator that a uniformed MOS was hitting him in the face when that was not in fact true, Bach testified that Respondent told Cruz to tell the 911 operator that an officer was "assaulting me" and Azevedo testified that Respondent told Cruz to tell the 911 operator that an officer "is punching me in the face." Although both Respondent and Cruz denied

that he had directed Cruz to tell the 911 operator that he was being assaulted or punched, I find that Bach's and Azevedo's claim that he said this is consistent with his action of telling Cruz to take photographs of his wrists and what I find to be his threats to get Bach dismissed from the Department.

I find it significant that Respondent admitted in his testimony that he had directed Cruz to get a camera and to take photographs of his wrists (RX B 1 and 2) in order to document his claim that they became bruised because Bach supposedly ignored his request to loosen the too-tight handcuffs. Respondent's admission that he had directed Cruz to create a record of what Bach had done to him is consistent with Bach's and Azevedo's testimony that Respondent had directed Cruz regarding what she should tell the 911 operator during a conversation that Respondent knew was being recorded.

Also, Bach's and Azevedo's claim that Respondent told Cruz to tell the 911 operator that Bach was committing an intentional physical assault is consistent with Azevedo's testimony that Respondent threatened to get Bach dismissed from the Department. I credit Azevedo's testimony that Respondent stated that Bach was "done" and "through" and that Respondent was going to "take his pension" from him because Azevedo's claim that Respondent made this threat was supported by Mineo, who also heard Respondent say that he "would take" Bach's pension, and by Abdul-Jabbar who testified that she heard Respondent tell Destefano, "Your boy Bach is going down. I'm gonna get his job." Since Azevedo's testimony that Respondent made this threat was supported by both Mineo and Abdul-Jabbar, I reject Respondent's testimony that he not only never threatened to get Bach fired or take away his pension but that, on the contrary, it was Bach who told him, "Sarge, now you're losing your pension."

Finally, regarding the charge that Respondent pushed Azevedo in the chest before he was handcuffed, since both Bach and Azevedo testified that Respondent did this, and since Cruz testified that when she first saw Respondent he was already handcuffed, Respondent's denial that he pushed Azevedo in the chest stands alone. Since Respondent's claim has no support in the record, I cannot credit it.

Respondent is found Guilty.

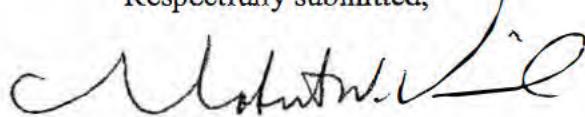
PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on October 15, 1990. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Assistant Department Advocate recommended that the penalty to be imposed on Respondent consist of the forfeiture of the 30 days he served on pre-trial suspension from October 26, 2009 to November 25, 2009, and the additional forfeiture of ten vacation days, for a total forfeiture of 40 days.

It is recommended that Respondent forfeit the 30 days he served on pre-trial suspension and that he also forfeit ten vacation days, for a total loss of 40 days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

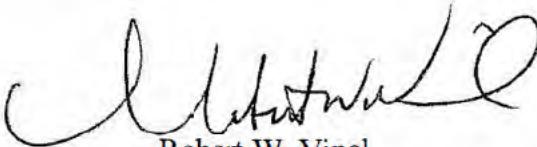
From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
SERGEANT REGINALD McREYNOLDS
TAX REGISTRY NO. 898049
DISCIPLINARY CASE NO. 2009-1094

The Respondent received an overall rating of 4.0 on his 2012 performance evaluation, 4.0 on his 2011 evaluation, and 4.0 on his 2010 evaluation. He has no medals. His only monitoring record is that he was suspended from October 26, 2009 until November 25, 2009. [REDACTED] He has no prior formal disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials